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**EVOLUTION OF GERMAN PUBLIC PROSECUTION SYSTEM: A  
COMPARATIVE ANALYSIS OF INQUISITORIAL AND ADVERSARIAL  
INFLUENCES**

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**Abstract**

Comparative Study is a captivating field within the social sciences that involves examining and contrasting different cultures, systems, and countries. The current article focuses on a comparative study of public prosecution systems in Germany and Pakistan. It is driven by a curiosity to understand the inquisitorial system of a Civil Law country like Germany, compared to Pakistan's adversarial system based on Common Law.

Germany is a highly developed country with a robust economy, high literacy rate, and a strong public prosecution system within its Civil Law framework. Its system is known for its efficiency and strong rule of law. In contrast, Pakistan faces challenges such as poverty, low literacy rates, and a deteriorating economy. Its adversarial criminal justice system is less effective compared to Germany's

Despite the stark differences, comparing these systems can provide valuable insights for improving practices across borders. The study aims to identify beneficial features of the inquisitorial system that could be integrated into Pakistan's adversarial system to create a hybrid model that upholds human rights and justice.

In conclusion, both systems have evolved differently. Civil Law countries like Germany favor the inquisitorial model with a dominant role for courts, while Common Law countries like Pakistan prefer the adversarial model with a significant role for the police during investigations. The creation of the Public Prosecution institution has shifted some judicial powers to this executive branch, blending judicial and executive functions.

**1. Introduction:-**The evolution of public prosecution systems has diverged significantly in adversarial and inquisitorial countries, reflecting different legal traditions and approaches to justice.

In adversarial systems, common in countries like the United States and the United Kingdom, the public prosecutor plays a pivotal role in presenting the case against the defendant. This system evolved from a private prosecution model to a public one to ensure impartiality and reduce the influence of private interests. The prosecutor operates independently, guiding police investigations, deciding whether to bring charges, and representing the state in court. This evolution has emphasized the importance of checks and balances, with the prosecutor acting as both a legal advocate and a gatekeeper to the criminal justice system.

In contrast, inquisitorial systems, found in countries such as France and Germany, feature a more active role for the public prosecutor in investigating crimes. Historically rooted in Roman law, this system evolved to give the prosecutor quasi-judicial powers, working closely with investigating judges to gather evidence and determine the truth. The prosecutor in this context is less an advocate and more an investigator, aiming to uncover facts impartially. The evolution of this system reflects a focus on a thorough and comprehensive investigation process, with the prosecutor ensuring that all relevant evidence is considered before proceeding to trial.

Both systems have continued to adapt and reform, influenced by increasing globalization, human rights considerations, and cross-border legal cooperation, but they maintain distinct characteristics shaped by their unique legal histories.

## **2. Definition of Public Prosecutor:**

In the beginning, it would be appropriate to define the term Public Prosecutor. The public prosecutor means

“ Any attorney, regardless of any agency, title, or full or part-time assignment, who acts as attorney to investigate or prosecute criminal cases, or who provides legal advice regarding criminal matters to the government lawyers, agents, or offices participating in investigation or prosecution of criminal cases”<sup>1</sup>.

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<sup>1</sup> American Bar Association, Standards for Criminal Justice on the Prosecution Function , § 3- 1.1 (4th ed. 2018). available at [https://www.americanbar.org/groups/criminal\\_justice/standards/ProsecutionFunctionFourthEdition/](https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/) visited on 19-9-23

This definition has been described by the American Bar Association. According to this definition, it means an public officer whose duty is to investigate or prosecute criminal cases on behalf of the Government in public interest at public expense. It does not matter what is the name of his post but such powers and functions denote the “Public Prosecutor”.

According to the recommendations adopted by the Committee of Ministers of council of Europe the definition of prosecutor is as under

“Public prosecutors” are public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system”<sup>2</sup>.

Another definition of “Prosecutor” has been defined by Merriam Webster dictionary. As per this definition “a prosecutor institutes a proceeding or represents the state in a criminal proceeding as a government attorney”<sup>3</sup>.

The Public Prosecutor is called by various names and designations in different countries. For example, in US he is called District Attorney, in France he is called *procureur public or ministère public*<sup>4</sup>, in Germany he is called *Staatsanwalt*. The Dutch called their prosecutor as *schout*. The Chinese called their prosecutor as *People's Procuratorate*, in Italy he is called *Publico Ministero* and he has so many names in other languages. Like his name; the powers, functions and nature of his duties also vary from state to state. In USA prosecutor is an elected executive officer. In Italy the prosecutor is a part of judiciary and enjoys same perks and privileges as of the judiciary. In Pakistan the prosecutor is an appointed officer having limited role in criminal justice system<sup>5</sup>. The variations of the powers, duties and functions of Public Prosecutor is because; the public prosecution systems of various countries have been differently evolved and developed.

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<sup>2</sup> <https://rm.coe.int/16804be55a> visited on 19-9-23

<sup>3</sup> <https://www.legalserviceindia.com/legal/article-4448-prosecutors-in-criminal-justice-system-a-comparative-analysis-between-indian-us-and-english-criminal-justice-system.html#:~:text=Role%20of%20the%20Prosecutor%3A,law%20was%20followed%20or%20not.> visited on August 26, 2023

<sup>4</sup> Verrest, P., 2000. The French public prosecution service. Eur. J. Crime Crim. L. & Crim Just., 8, p.210.

<sup>5</sup> Sleator J, “The Public Prosecution Service” (2011) 11 Legal Information Management 209

### 3 History and Context of Public Prosecution:

The office of the public prosecutor is comparatively a new component of the criminal justice system, when compared to the longstanding roles of courts and police. Although powers and functions similar to those performed by prosecutors today existed in ancient times but there was no official position designated for this purpose. Rather, such powers were exercised either by Judge, Jury or Police authorities. The office of public prosecutor is a latecomer<sup>6</sup>.

During the fourteenth century, a novel institution emerged in continental Europe. This institution, known as the public prosecution office, was established to carry out prosecutorial duties. Emperor Sigismund of Luxembourg introduced the Office of Royal Prosecutor in 1437, by appointing Vilém of Žlutice as its first head with authority to represent the King during legal proceedings<sup>7</sup>.

In order to comprehend the historical and contextual underpinnings of public prosecution, one must first acquaint oneself with distinct systems and players working within these system. These systems are known as Inquisitorial and Adversarial, while the players working within these system include Examinee Magistrates, Investigative Judges and Justices of Peace. These systems and its players are intricately connected to the present shape and structure of global public prosecution systems<sup>8</sup>.

The powers and functions of public prosecutors in inquisitorial countries have evolved and developed differently from those in adversarial countries. It is also noteworthy that civil law predominates in inquisitorial countries, while common law prevails in adversarial ones. Furthermore, it has been observed that past Examinee Magistrates or Investigative Judges in inquisitorial nations possessed powers and functions similar to those of present-day public prosecutors. In past, a few prosecutorial duties had been conducted either by Justices of Peace in adversarial system specially in UK<sup>9</sup>.

In 1748, through his book "The Spirit of Law," the renowned French philosopher Montesquieu revolutionized traditional approach by introducing the

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<sup>6</sup> Langbein, J.H., 1973. The origins of public prosecution at common law. *Am. J. Legal Hist.*, 17, p.313.

<sup>7</sup> renata Vesecká, J., 2010. editorial staff *Journal of Criminal law and Public Prosecution*. PP-17

<sup>8</sup> van Koppen, P.J. and Penrod, S.D. eds., 2012. *Adversarial versus inquisitorial justice: Psychological perspectives on criminal justice systems* (Vol. 17). Springer Science & Business Media.

<sup>9</sup> Langbein, J.H., 1973. The origins of public prosecution at common law. *Am. J. Legal Hist.*, 17, p.313

concept of separation of powers<sup>10</sup>. He vehemently opposed the consolidation of powers in one individual and instead proposed dividing State powers into three distinct categories: legislative, executive, and judiciary. Montesquieu maintained that an individual cannot exercise both executive and judicial powers simultaneously, which led to a reduction in the role of courts exercising executive power in inquisitorial countries<sup>11</sup>.

Now the governments are modelling and reshaping their institutions in a way so that the judicial, executive and legislative power should not be exercised by single authority. Therefore, the executive powers which were being exercised by Examinee Magistrates or Investigative Judges had to be discontinued in inquisitorial countries. The role of Examinee Magistrates or Investigative Judges in investigation and inquiry is curtailed now. A separate directorate was needed to establish in lieu of Examinee Magistrates and Investigative Judges. In this way the powers and duties performed by the Examinee Magistrates and Investigative Judges were devolved upon office of the public prosecution<sup>12</sup>.

In addition to the aforementioned observations, it is evident that the gradual development of human rights, principles of fair trial and due process of law have a positive impact on the evolution and enhancement of modern concepts surrounding public prosecution. It is imperative to explore how conventional public prosecution has transformed into its modern public prosecution in welfare states. The United Nations and European Union, among other world-renowned institutions, have accepted various declarations aimed at protecting accused persons' rights as well as victims' rights in cases involving criminal activity. Furthermore, these rights have been incorporated into many countries' respective national laws and are therefore subject to adherence under international legal principles by signatories to these declarations. National institutions including Public Prosecution Department are thus obligated to respect such declarations accordingly.<sup>13</sup>

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<sup>10</sup> Callanan, K., 2023. The Spirit of the Laws. *The Cambridge Companion to Montesquieu*, p.54.

<sup>11</sup> Sorna, U.S., 2021. Separation of Power.

<sup>12</sup> Goldstein, A.S. and Marcus, M., 1977. The myth of judicial supervision in three "inquisitorial" systems: France, Italy, and Germany. *The Yale Law Journal*, 87(2), pp.240-283. PP-243

<sup>13</sup> Gershman, B.L., 2005. Prosecutorial Ethics and Victim's Rights: The Prosecutor's Duty of Neutrality. *Lewis & Clark L. Rev.*, 9, p.559.

Moreover, international organizations such as the International Association of Public Prosecutors and European Union Public Prosecutors Association have issued general guidelines for independent, effective and efficient public prosecution practices<sup>14</sup>.

In contemporary times, the old demarcation of powers and functions of public prosecutors in inquisitorial and adversarial systems is gradually dissipating owing to the safeguarding of human rights and adherence to principles of separation of powers. Consequently, a universal trend towards a hybrid model of public prosecution has emerged wherein it serves as both a guardian of human rights and a supervisor of investigative proceedings. The primary aims that govern the conduct of public prosecution encompass, among others, safeguarding due process, preserving human rights and revealing veracity<sup>15</sup>.

### **3.1 Evolution of inquisitorial model of criminal trial in continental Europe:**

In 1198 A.D., Pope Innocent III of the Catholic Church redefined the model of ecclesiastical courts through numerous decrees. The administration of criminal justice was divided into two distinct phases, with the first phase consisting of an investigation conducted by an Examinee Magistrate or Investigative Judge. In the second phase, a trial for the accused would be presided over by a Trial Judge<sup>16</sup>.

The ecclesiastical courts thus had dual functions: investigation and trial. Furthermore, these courts were empowered to take cognizance on their own without any complaint from victims. Even these court could initiate criminal proceedings against individuals possessing ill-repute who might then face punishment accordingly<sup>17</sup>.

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<sup>14</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors> visited on 19-9-23

<sup>15</sup> Ramsey, C.B., 2002. The discretionary power of public prosecutors in historical perspective. *Am. Crim. L. Rev.*, 39, p.1309.

<sup>16</sup> Laing, R.S.A., 2011. *The influence of Pope Innocent III on spiritual and clerical renewal in the Catholic Church during thirteenth century South Western Europe* (Doctoral dissertation).

<sup>17</sup> Outhwaite, R.B., 2006. *The rise and fall of the English ecclesiastical courts, 1500-1860*. Cambridge University Press.

Most importantly, investigations or inquiries could be carried out either openly or secretly. Inquisitorial system was further endorsed by approval by the Fourth Council of Lateran in 1215<sup>18</sup>.

### **3.2 Adversarial Model of criminal justice system:**

On the other hand, during 18th century the English law introduced adversarial model of administration of justice. In this model, the judge and jury are impartial evaluator of the evidences. The complainant and defendant are free to present their case as per their choice before the court. The judge is acting as referee in the combat of complainant and defendant. The prosecution by the State was limited only in heinous offenses like felony cases. The minor offenses and misdemeanors were prosecuted privately in common law. Trial by Jury is also a common feature of adversarial countries<sup>19</sup>.

Under this model, trials were considered a free combat between prosecution and defense before an impartial judge and jury. The court could not initiate criminal proceedings without the application of victim and witnesses. Both the prosecution and defense were allowed to present evidence in their favor, while witnesses were subject to cross-examination by the opposing party. This approach ensured that justice was served fairly and transparently, with all parties given equal opportunity to present their case<sup>20</sup>.

The Adversarial system comprises several fundamental elements. Firstly, the presiding judge or jury must remain impartial throughout the proceedings. Secondly, both parties are entitled to present evidences that may not have been considered during earlier stages of investigation. Thirdly, each party has the right to cross-examine witnesses, including the accused's ability to question those presented by prosecution. Fourthly, parties can be represented by lawyers or advocates of their choice. Fifthly, rules governing evidence procedures are highly structured and thus place greater emphasis on legal representatives than judges in presenting such information. The power of questioning by the judge is comparatively limited within

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<sup>18</sup> Freeman, E., 2018. The Fourth Lateran Council of 1215, the Prohibition against New Religious Orders, and Religious Women. *Journal of Medieval Religious Cultures*, 44(1), pp.1-23.

<sup>19</sup> Beattie, J.M., 1991. Scales of justice: Defense counsel and the English criminal trial in the eighteenth and nineteenth centuries. *Law and History Review*, 9(2), pp.221-267.

<sup>20</sup> Sward, E.E., 1988. Values, ideology, and the evolution of the adversary system. *Ind. LJ*, 64, p.301.

this system. Mostly, the adversarial countries require twelve members jury alongside a judge. The determination of factual inquiry lies in the hands of the jury, while the judge's authority is confined to enforcing legal principles exclusively. The responsibility of rendering a verdict of either "guilty" or "not guilty" rests solely with the jury rather than with the presiding judge<sup>21</sup>.

### **3.3 Differences between Inquisitorial and Adversarial criminal justice systems:**

The inquisitorial system predates the adversarial system and was developed by the Catholic Church during the twelfth centuries. Its courts were established to investigate crimes, institute prosecution, and deliver justice primarily in continental European countries with an inquisitorial background. These courts possessed not only judicial powers but also executive ones, enabling them to initiate prosecution and conduct investigations with the assistance of their own supportive staff known as court police. The officers responsible for conducting these inquiries were referred to as examinee magistrates or investigation judges who had a subjective involvement in determining outcomes. Judges could take action on their own accord without any complainant and had authority over initiating or discontinuing criminal investigations. Today, such powers are vested with public prosecution offices instead of judges within the framework of modern criminal justice systems. The inquisitorial model was implemented throughout continental Europe, encompassing nations such as France, Italy, Germany, and others with a civil law orientation<sup>22</sup>.

Conversely, the adversarial model was more prevalent in Anglo-American countries with a common law background, including the UK and its colonies in USA. It is not possible to assert that one system is superior to the other; each possesses its own merits and drawbacks.

However, it is feasible to incorporate positive aspects of one system into another. Examples of this hybrid approach can be found in Italy's legal system as well as those of Quebec and Louisiana. Many countries are integrating advantageous

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<sup>21</sup> Block, M.K., Parker, J.S., Vyborna, O. and Dusek, L., 2000. An experimental comparison of adversarial versus inquisitorial procedural regimes. *American Law and Economics Review*, 2(1), pp.170-194.

<sup>22</sup> Hodgson, J., 2006. Conceptions of the trial in inquisitorial and adversarial procedure. *JUDGMENT AND CALLING TO ACCOUNT*, A. Duff, L. Farmer, S. Marshall and V. Tadros, eds, pp.223-42.

features from alternative systems into their existing frameworks for improved efficacy within their criminal justice administration while safeguarding human rights and upholding the rule of law<sup>23</sup>.

### **3.4 Examinee/Investigative Magistrates:**

In the inquisitorial model of criminal justice system, the criminal proceedings can be divided into two stages. First is investigation or inquiry, it is also called Pre-trial stage. During this stage, the crime is investigated openly or secretly through investigation officer (usually by police) under the supervision of the Examinee Magistrate of Investigative Judge. Generally, the court had its own police that is called court police which was different from regular police. It was the duty of Examinee of Investigative Magistrate to conduct inquiry or investigation of the crime with the help of court police. The Examinee Magistrates decided to take certain decision like initiation of criminal proceedings, initial framing of public charges, arrest, detention, surveillance, under cover agent, location tracking, search, recoveries, discoveries, interrogations, statements and so on<sup>24</sup>.

### **3.5 Justice of Peace:**

Especially in UK and other common law countries, a designation of justice of peace was created by the King. This designation had mix functions of judiciary and executive. The Justice of Peace had role in keeping peace, in investigation of crime and collection of evidences. It had powers to order for arrest and detention. The Justice of Peace has power to issue directions to law enforcing agencies. The Justice of Peace had power to maintain peace<sup>25</sup>.

As per Merian Act, the Justice of Peace were delegated the powers of prosecution on behalf of the State in felony cases<sup>26</sup>. The Justice of Peace had also

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<sup>23</sup> KirchengasT, T., 2019. Mixed and Hybrid Systems of Justice and the Development of the Adversarial Paradigm: European Law, Inquisitorial Processes and the Development of Community Justice in the Common Law States. *Rev. Faculdade Direito Universidade Federal Minas Gerais*, 75, p.513.

<sup>24</sup> Calvo-Goller, K.N., 2006. 1. The Adversarial and the Inquisitorial System. In *The Trial Proceedings of the International Criminal Court* (pp. 141-146). Brill Nijhoff.

<sup>25</sup> Beard, C.A., 1904. *The Office of Justice of the Peace in England in its Origin and Development*. Columbia University Press.

<sup>26</sup> Langbein, J.H., 1974. *Prosecuting crime in the renaissance: England, Germany, France*. Harvard University Press.

judicial power to announce punishments in minor cases. The Justice of Peace was also responsible to conduct public prosecution<sup>27</sup>.

### **3.6 Human Rights and Fair Trial Principles:**

Every human has some basic rights regardless of his race, gender, religion, nationality and so on, these rights are called human rights. The concept of human rights was embedded in the history of human beings but it is gradually adopted and accepted by the world. First document talking about the human right is Cyrus Cylinder in 539 B.C. The second corner stone is Magna Carta (1215 A.D.)<sup>28</sup>. It states about rule of law, civil liberties and human rights. Thereafter, Bill of Rights was passed by the English parliament in 1689. Soon after the Bill of Right of English parliament, the French national assembly passed a Declaration of rights of man and of citizens in 1789. The US also passed Bill of Rights law in 1791. Ultimately, in 1948, the Universal Declaration of Human Rights was passed by the General Assembly of United Nations containing 30 article of various human rights<sup>29</sup>.

Accused and victim are two main key player in criminal justice system. As being human both the accused and victim have some rights. The world also accepted the rights of accused as well as of victim in criminal trials through various documents.

A few rights of accused have been enumerated here. The accused has right of fair trial through an unbiased judged. He has right of public hearing and speedy trial. He has right to be heard. He has right to be explained charges against him. He has right to be informed about all evidences so that he may be able to defend himself. He has right to have a counsel of his choice. He has right to remain silent. He has right to have counsel of his choice. He has right against self incrimination. He has right to presume innocent unless proven guilty. It is the duty of a public prosecution office to make sure that while collection of evidence no right of accused should be infringed.

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<sup>27</sup> Tompson, R.S., 1986. The Justices of the Peace and the United Kingdom in the Age of Reform. *The Journal of Legal History*, 7(3), pp.273-292.

<sup>28</sup> Ishay, M., 2008. *The history of human rights: From ancient times to the globalization era*. Univ of California Press.

<sup>29</sup> Headley, J.M., 2008. *The Europeanization of the world: On the origins of human rights and democracy*. Princeton University Press.

Moreover, during the trial proceedings all rights of accused must be protected in every step<sup>30</sup>.

On the other hand, the victim of the crime also has certain rights. The victim of crime has a right to be informed about the investigation and inquiry proceedings. He has right to be informed of public and private programs available for counseling, treatment, and other support services. He has right to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender. He has right to know the status of the investigation of the crime, to the extent it is appropriate and will not interfere with the investigation. He has right challenge the decisions of prosecution or court which are not in his favour<sup>31</sup>.

Fundamental duty of a Welfare State is to protect the rights of its citizen, including accused and victim. Now therefore, the criminal justice systems of the world are adopting such measures and modifications which can defend the rights of accused and victim. Hence, the every organ of the criminal justice system including court, prosecution and police are bound to protect rights of accused and victim. Hence, the Public Prosecution systems of the Welfare States are refining themselves into modern system for protection of human rights in criminal trials<sup>32</sup>.

On the other hand, the latest concept of Welfare State, has dynamically changed the thought of Public Prosecution. In addition to it, the international declarations on human rights and principle of natural justice have redefined the duties, functions and obligations of the present public prosecution. As per modern concept of a Welfare State, the State is called the mother of her citizens. Evolution of Public Prosecution system has made it a complicated subject with lapse of time. As the State is mother of its citizens including victims and accused. There are many legal and fundamental rights attached to an accused person and victim. Therefore, an independent and efficient public prosecutor does not merely act as counsel of victim but also acts as defender of the rights of the accused as well. It is prime duty of the public prosecutor to bring a balance between rights of victim and accused. All

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<sup>30</sup> Stevens, E., 1900. Origin and Growth of Rights of Accused. *Green Bag*, 12, p.392.

<sup>31</sup> Bassiouni, M.C., 2006. International Recognition of Victims' Rights. *Human Rights Law Review*, 6(2), pp.203-279.

<sup>32</sup> Wilson, L.A., 2015. The rights of victims vs the rights of the accused: striking a balance between the rights of the victims and the accused persons in the international criminal justice setting. *University of Western Australia Law Review*, 38(2), pp.152-174.

exculpatory and exonerating evidences must be produced by the public prosecutor before the court so that the court can appropriately evaluate the evidences and may pronounce sentence proportionate with the criminal liability of the accused on case to case basis. During this whole process, the public prosecutor has to play the role of a custodian of the rights of victim as well as of accused.

#### **4. Transformation from old concept of prosecution to modern approach:**

From the above discussion, it can be inferred that the classical shape of old inquisitorial and adversarial criminal systems are transforming into modern structure where human rights can be protected and principle of separation of powers can be adhered. In this way, a modern public prosecutor emerged from the evolution whose duty is not only limited to prosecution but as well as to protect the rights of accused and victim.

One of the most fundamental duty of a government is to administer justice. In this regard, government constitutes different institutions like police, prosecution, courts, probation and rehabilitation centers in order to administer justice. This is collectively called criminal justice system. Different countries have different models of criminal justice systems. Similarly, the public prosecution models are also different from country to country<sup>33</sup>.

However, now a day, the Public Prosecution Service had become an indispensable part of the Administration of Criminal Justice System all over the world. Although the idea of independent, effective and efficient public prosecution was started to develop during the middle ages in the Continental European countries having civil law system but later on it was equally accepted all over the world including common law countries<sup>34</sup>. Even the idea of Independent, effective and efficient Public Prosecution Service was greeted in communist countries like Soviet Union, China and others<sup>35</sup>.

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<sup>33</sup> [https://www.studysmarter.co.uk/explanations/social-studies/crime-and-deviance/criminal-justice-system/#:~:text=The%20Criminal%20Justice%20System%20\(CJS,punish%2C%20and%20rehabilitate%20criminal%20offenders.](https://www.studysmarter.co.uk/explanations/social-studies/crime-and-deviance/criminal-justice-system/#:~:text=The%20Criminal%20Justice%20System%20(CJS,punish%2C%20and%20rehabilitate%20criminal%20offenders.)

<sup>34</sup> Ma, Yue. "Exploring the origins of public prosecution." *International Criminal Justice Review* 18, no. 2 (2008): 190-211.

<sup>35</sup> Mou, Yu. "Overseeing criminal justice: The supervisory role of the public prosecution service in China." *Journal of Law and Society* 44, no. 4 (2017): 620-645.

It is said that present public prosecutor may be a direct descendant of either French *procureur publico* or Dutch *Schout* of American Attorney General<sup>36 37</sup>. The progressive democracies are of the view that an offence is not a personal matter between victim and accused. There are many offenses that affect the society at large. The distinction between the term offense and crime is that offense means an act or omission punishable under the law while the word crime denotes an offence which affects the society at large. There are many offenses that directly affect the society and these offenses called crimes. For example, murder, rape, robbery, terrorism and many others. The society as a whole is victim of such crimes. Hence, the State is responsible to bring prosecution against such crimes at public expenses. The State is directly party to the outcome of the criminal proceedings. The State has to bear the expenses of trial, execution of sentence and imprisonment or rehabilitation of such criminals.

Therefore, the State is responsible for prosecution of offenses against its citizens. The State is also responsible for protection and rehabilitation of the victim of the crime. Moreover, the poor and powerless people will not be able to prosecute their cases in a complicated criminal justice system if the State does not come forward in their help. Therefore, the progressive and welfare states have created the public prosecution model wherein the prosecution is conducted by a public officer at public expenses. In this model the society is treated as first victim to the crime and the actual victim is treated a secondary affected person. The officer representing the State for conducting public prosecution is called public prosecutor and the organization of public prosecutors is called public prosecution service.

## 5. Conclusion

It can safely conclude that both systems have differently evolved. The Civil Law countries preferred the inquisitorial model of criminal justice system while the Common Law countries adopted the adversarial model of criminal justice system. In

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<sup>36</sup> Powers of the Prosecutor in Criminal Investigation : A Comparative Perspective  
Karolina Kremens, Taylor & Francis Group 2020

<sup>37</sup> Gilliéron, Gwladys, and Gwladys Gilliéron. *Public Prosecutors in the United States and Europe : A Comparative Analysis with Special Focus on Switzerland, France, and Germany*, Springer International Publishing AG, 2014. *ProQuest Ebook Central*,  
<https://ebookcentral.proquest.com/lib/brunelu/detail.action?docID=1698342>.

the inquisitorial model the role of courts was dominant not only in trial but also during the investigation. On the other hand side, the role of police was more dominant during the investigation, however, the role of courts was limited to the trial proceedings only. After the inception of institution of the Public Prosecution in the criminal justice system, executive powers which were being exercised by the judiciary were delegated to the newly added stake holder that is the prosecution. On the other side, the common law countries have adversarial model, the judicial powers which were being exercised by police were given to the public prosecution. In this way, a new institution came into being which is a branch of executive but it has some powers of semi-judicial in nature.

It is established now that there is no red line between adversarial and inquisitorial system of criminal justice. A hybrid system is possible and it is quite constitution to incorporate or implant the beneficial features of other system.

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